HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 1351 of 2006

Between:

M.V. Subbaiah

... Appellant

And

A.P.S.R.T.C.,
Rep. By its Chairman & Managing Director,
Hyderabad & another

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Smt. B. Malleswari

Counsel for the respondents: Shri P. Vinayaka Swamy, Standing Counsel for APSRTC

August 03, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 31.8.2006 passed by the learned Single Judge in Writ Petition No.16371 of 2003 whereby he refused to nullify the action taken by Regional Manager, Andhra Pradesh State Road Transport Corporation, Kadapa (respondent No.2) to re-fix the appellant's pay by withdrawing the Special Grade Increment and other benefits granted to him vide orders dated 1.5.1990 and 17.2.1993.

The appellant joined the service as Conductor on 1.4.1978 in Allagadda Depot of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'). On 2.9.1984, the officials of

Regional Office, Kadapa raided bus No.AAZ-3155, on which the appellant was giving duty. They submitted report of cash and ticket irregularities by the appellant. Thereupon, an enquiry was instituted against him by Depot Manager, Allagadda. The enquiry officer submitted report with the finding that the charge levelled against the delinquent i.e. the appellant is proved. The Depot Manager accepted the enquiry report and issued proceedings No.02/104(101)/84-Alg dated 09.1.1985 whereby he removed the appellant from service. On appeal, Divisional Manager, Kadapa vide his order dated 27.4.1985 reinstated the appellant with the condition that his seniority shall be reckoned from the date of joining and the intervening period shall be treated as 'not on duty' for the purpose of leave and increments. The relevant extract of that order is reproduced below:

> "In the light of the above, I finally offer him a chance to serve in the organization with a view that he will not commit such irregularities in future. I, therefore, hereby order that he be reinstated into the services of the corporation with immediate effect on a minimum pay of Rs.410/- per month on reduction of his pay in the time scale of Rs.440-15-575-20-715 and other allowance admissible to him. The seniority shall be reckoned from the date of report for duty on reinstatement into service. The period from the date of suspension till the date of his reporting for duty as Conductor shall be treated as not on duty for the purpose of leave and increments. On reinstatement, he shall remit security deposit of Rs.400/- (at a time) at Cuddapah depot to which he is posted while executing fresh bond."
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> (Underlining is ours)

The appellant reported for duty on 13.5.1985. He then filed petition for review of order dated 27.4.1985, which was dismissed by respondent No.2.

After five years of his reinstatement, Divisional Manager, Kadapa passed order dated 1.6.1990 whereby he placed the appellant in Special Grade with effect from 1.5.1990 by erroneously assuming that

he had completed 12 years service. By another order dated 17.2.1993, the appellant was promoted as Grade I Conductor with effect from 1.7.1992. All this was done by taking into account the appellant's service with effect from 1.4.1978 instead of 13.5.1985 and ignoring the fact that in terms of order dated 27.4.1985 passed by the Divisional Manager, the appellant's service during the period of suspension is not to be counted for the purpose of leave and increments. This patent error was discovered by the office of respondent No.2 sometime in 2003, who then passed order dated 16.4.2003 for re-fixing the appellant's pay by withdrawing the Special Grade Increment etc. and for recovery of the excess amount already paid.

The appellant challenged the aforementioned order in Writ Petition No.16371 of 2003 by contending that the fiscal benefits conferred upon him could not have been withdrawn by respondent No.2 after a gap of 13 years and that too without giving him notice and opportunity of hearing.

The learned Single Judge dismissed the writ petition by recording the following observations:

> "A perusal of the record would show that earlier the petitioner was removed from service, by order dated 09.01.1985, on certain cash and ticket irregularities. On appeal filed by the petitioner, he was ordered to be reinstated by proceedings dated 27.04.1985 on condition that his seniority in the post of Conductor would be reckoned from the date of his reporting to duty. By virtue of this order, the petitioner has lost the benefit of the past service. As the petitioner in pursuance of the proceedings dated 27.04.1985, reported to duty on 13.05.1985, his seniority has to be reckoned with effect from 13.05.1985 and not from 01.04.1978. But, by mistake, the respondents in stead of taking 13.05.1985, on which date he re-joined duty, have taken the date of his initial appointment into service i.e., 01.04.1978, and granted special grade benefits with effect from 01.05.1990 and promotion to Grade-I Post with effect from

01.07.1992. Subsequently, after noticing the said mistake, the 2nd respondent passed the impugned proceedings directing to re-fix the pay of the petitioner duly withdrawing the special grade and Grade-I benefits and to effect recovery of excess amount paid to him. As the petitioner, by mistake was granted the special grade benefits and promotion to Grade-I post, without taking into consideration that his seniority has to be reckoned from the date of his reporting to duty by virtue of the orders of reinstatement passed by the Divisional Manager, no exception can be taken to the action taken by the 2nd respondent in issuing the impugned proceedings, directing to re-fix the pay of the petitioner after withdrawing the special grade and Grade-I benefits and to effect recovery of excess amount paid to him."

Smt.B. Malleswari argued that conditional reinstatement of the appellant did not efface his past service and the Divisional Manager did not commit any illegality by giving him the benefit of Special Grade Increment with effect from 1.5.1990 and promotion as Grade-I Conductor with effect from 1.7.1992. She further argued that order dated 16.4.2003 is vitiated due to patent violation of the rule of hearing and the learned Single Judge committed a serious error by declining to nullify the withdrawal of Special Grade Increment and other consequential benefits given to the appellant on completion of 12 years service counted from 1.4.1978. Learned counsel emphasised that even if the Divisional Manager had erroneously granted the benefit of Special Grade Increment and promotion to the appellant, the same could not have been withdrawn after a long time gap of 13 years. In support of her arguments, Smt. Malleswari relied on the judgments of the Supreme Court in **State of Tamil Nadu v. V.S. Balakrishanan**[1], **B.C. Chaturvedi v. Union of India**[2] **State of Andhra Pradesh v. N. Radhakishan**[3], **Air India Limited v. M. Yogeshwar Raj**[4], **District Forest Officer v. R. Rajamanickam**[5],

Narmada Bachao Andolan v. Union of India[6] and of the Madhya Pradesh High Court in **S.S. Garud v. F.C.I.**[7].

Shri P. Vinayaka Swamy defended the action taken by respondent No.2 to withdraw the illegal benefits showered upon the appellant and argued that before rectifying the apparent mistake committed by the Divisional Manager in granting monetary benefits and promotion to the appellant by counting his service with effect from 1.4.1978, respondent No.2 was not required to comply with the rules of natural justice. Shri Swamy further argued that order dated 16.4.2003 should not be annulled on the ground of violation of the rules of natural justice because the appellant has not suffered any prejudice on that account. In the end, learned counsel gave out that the appellant was granted Special Grade Increment in 1997 because he had completed 12 years service counted from 13.5.1985.

We have given our most anxious consideration to the rival submissions and scrutinised the records. At the cost of repetition, we consider it necessary to mention that by an order dated 09.1.1985, the Disciplinary Authority had removed the appellant from service because he was found guilty of cash and ticket irregularities. The Appellate Authority i.e. respondent No.2 ordered his reinstatement with a specific stipulation that his seniority shall be reckoned from the date he reports for duty and the period from the date of suspension till the date of joining shall be treated as 'not on duty' for the purpose of leave and increments. He was also asked to execute fresh bond. The net effect of the appellate order was that the appellant lost his past service for the purpose of seniority and the period between the date of suspension and date of joining duty was not to be counted for the purpose of increment etc. Notwithstanding this, Divisional Manager,

Kadapa gave unwarranted benefits to the appellant in the form of Special Grade Increment with effect from 1.5.1990 and promotion as Grade-I Conductor with effect from 1.7.1992. If the appellant's seniority in the cadre of Conductor is to be counted from the date of joining i.e. 13.5.1985, he could be granted Special Grade Increment and promoted as Grade-I Conductor only in the year 1997. Therefore, respondent No.2 did not commit any illegality by re-fixing his pay and we do not see any valid ground or justification to differ with the learned Single Judge that respondent No.2 had correctly withdrawn the illegal benefit conferred upon the appellant by the Divisional Manager.

It is true that order dated 16.4.2003 was not preceded by notice and opportunity of hearing to the appellant, but in the facts of this case, we are not inclined to nullify the action taken by respondent No.2 only on the ground of violation of the rule of audi alterem partem. It is neither the pleaded case of the appellant nor the learned counsel argued that despite the unequivocal stipulation contained in the order of reinstatement, the past service of her client could be counted for the purpose of grant of Special Grade Increment, which is admissible on completion of 12 years service or promotion as Grade-I Conductor with effect from 1.7.1992. It is, therefore, reasonable to take the view that violation of the rules of natural justice has not caused any prejudice to the appellant and the notice, if any given to him by respondent No.2 would have proved an empty formality. The theory of empty or useless formality, which was, by and large, rejected by the courts in sixties and seventies is now well recognised and is being applied for refusing relief to the aggrieved person if he fails to show that violation of the rules of natural justice has prejudiced his cause – **Janki Nath Sarangi Vs. State of Orissa**[8], **R.C.Sharma Vs. Union of India**[9], **Sunil**

Kumar Banerjee Vs. State of West Bengal[10], **K.N. Tripathi Vs. State Bank of India**[11], **Mumtaz Hussein Ansari Vs. State of U.P.**[12], **Kashinath Dikshita Vs. Union of India**[13], **Chandrama Tiwari Vs. Union of India**[14], **Managing Director, ECIL Vs. B. Karunakar**[15], **Krishanlal Vs. State of Jammu and Kashmir**[16], **State Bank of Patiala Vs. S.K. Sharma**[17], **S.K. Singh Vs. Central Bank of India**[18], **State of Uttar Pradesh Vs. Shatrughanlal**[19], **Food Corporation of India Vs. Padamkumar Bhuvan**[20], **State of Uttar Pradesh Vs. Harendra Arora**[21], **Oriental Insurance Company Vs. S. Balakrishnan**[22], **State of Uttar Pradesh Vs. Rameshchand Manglik**[23]; **Canara Bank Vs. Debasis Das**[24], **Indra Bhanu Gaur Vs. Committee, Management of M.M Degree College**[25], **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**[26], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[27], **Punjab National Bank v. Manjeet Singh**[28], **P.D. Agrawal v. State Bank of India**[29] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[30] and **K.C. Asthana v. State of Uttar Pradesh**[31] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd

amendment). The main question considered by the Constitution Bench was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. Their Lordships of the Supreme Court also considered the following ancillary/incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the main question in affirmative, the Supreme

Court considered the ancillary questions and answered question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not

mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora**'s case (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is

> defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar**'s case (supra) and observed that the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The

employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to “useless formality theory, in a given case”.

In **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given."

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

> “The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

> "Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to

contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460]**, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

> "A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

By applying the ratio of the above noted judgments to the facts of this case, we hold that the learned Single Judge did not commit any error by refusing to annul order dated 16.4.2003 passed by respondent No.2.

The judgments of the Supreme Court and the High Court of Madhya Pradesh on which reliance has been placed by the learned counsel for the appellant do not have any bearing on the issue raised in this appeal.

In **State of Tamil Nadu v. V.S. Balakrishnan** (supra), the Supreme Court held that once a government employee is deemed to have opted for absorption in the service of a cooperative federation, he cannot seek repatriation to the parent service and that too after a long time gap of 22 years.

In **B.C. Chaturvedi v. Union of India** (supra), the Supreme Court dealt with the scope of judicial review of departmental action in the context of the doctrine of proportionality and held that the High Court cannot, ordinarily, interfere with the discretion exercised by the employer to punish an employee found guilty of misconduct.

In **State of Andhra Pradesh v. N. Radhakishan** (supra), the Supreme Court considered the question whether delay in the initiation of enquiry vitiates the departmental proceedings and held that each case has to be decided on its own facts.

In **Air India Limited v. M. Yogeshwar Raj** (supra), the Supreme Court held that the High Court should not pass interim order, which has the effect of frustrating the departmental proceedings initiated by the employer.

In **Narmada Bachao Andolan v. Union of India** (supra), the Supreme Court held that the writ petition filed after 13 years of the commencement of construction of Sardar Sarovar Dam could be

dismissed on the ground of laches.

In **S.S.Garud v. F.C.I.** (supra), a Division Bench of Madhya Pradesh High Court held that 10 years delay was fatal to the initiation of departmental enquiry.

In none of the above noted cases, the Supreme Court or the Madhya Pradesh High Court considered the issue relating to withdrawal of illegal financial benefit conferred on an employee. Therefore, the proposition laid down in those cases cannot be made basis for granting relief to the appellant.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2863 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

August 03, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] 1995-I-LLJ-1036 = (1994) Supp. 3 SCC 204

[2] 1996-I-LLJ-1231 = (1995) 6 SCC 749

[3] AIR 1998 SC 1833

[4] 2000-II-LLJ-250 = (2000) 5 SCC 467

[5] (2000) 9 SCC 284

[6] (2000) 10 SCC 664

[7] 2004-I-LLJ-353

[8] (1969) 3 SCC 392

[9] (1976) 3 SCC 574

[10] (1980) 3 SCC 304
[11] (1984) 1 SCC 43
[12] (1984) 3 SCC 295
[13] (1986) 3 SCC 229
[14] (1987) Suppl. SCC 518
[15] (1993) 4 SCC 727
[16] (1994) 4 SCC 422
[17] (1996) 3 SCC 364
[18] (1996) 6 SCC 415
[19] (1998) 6 SCC 651
[20] (1999) SCC (L&S) 620
[21] (2001) 6 SCC 392
[22] (2003) 11 SCC 734
[23] (2003) 3 SCC 443
[24] (2003) 4 SCC 557
[25] (2004) 1 SCC 281
[26] (2005) 2 SCC 237
[27] (2005) 3 SCC 409
[28] (2006) 8 SCC 647
[29] (2006) 8 SCC 776
[30] (1991) 1 SCC 588
[31] (1988) 3 SCC 600